

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANGELO ROCHELLE McMULLAN,

Petitioner, Civil No. 05-70807-DT
v. HONORABLE JOHN CORBETT O'MEARA
UNITED STATES DISTRICT JUDGE

KURT JONES,

Respondent,

**OPINION AND ORDER GRANTING MOTION TO REOPEN HABEAS
PETITION, GRANTING THE MOTION TO AMEND PETITION FOR WRIT OF
HABEAS CORPUS AND ORDERING THAT THE AMENDED PETITION BE
SERVED UPON THE RESPONDENT AND THE MICHIGAN ATTORNEY
GENERAL, AND ORDER DIRECTING RESPONDENT TO FILE A
SUPPLEMENTAL ANSWER IN THIS CASE.**

On August 27, 2006, this Court entered an opinion and order granting petitioner's motion to hold his habeas petition in abeyance to allow petitioner to return to the state courts to seek an order pursuant to M.C.R. 6.428 to reinstate his appeal of right. The Court also administratively closed the case. See *McMullan v. Jones*, 2006 WL 1134364 (E.D. Mich. April 27, 2006). Petitioner has now filed a motion to reopen his petition for writ of habeas corpus following the exhaustion of his claims. Petitioner has also filed a motion to amend his habeas petition. For the reasons stated below, the motion to reopen the habeas petition is **GRANTED**. The Court will also **GRANT** the motion to amend the habeas petition. The Court will further order that the Clerk of the Court serve a copy of

the amended petition for writ of habeas corpus upon respondent and the Michigan Attorney General's Office by first class mail. The Court will further order the respondent to file a responsive pleading to the amended petition and the Rule 5 materials within **sixty (60)** days of the Court's order.

Federal courts have the power to order that a habeas petition be reinstated upon timely request by a habeas petitioner. See *Woods v. Gilmore*, 26 F. Supp. 2d 1093, 1095 (C.D. Ill. 1998); *Parisi v. Cooper*, 961 F. Supp. 1247, 1249 (N.D. Ill. 1997). Because petitioner is now alleging that his claims have been exhausted with the state courts, his petition is now ripe for consideration. Accordingly, the Court will order that the original habeas petition be reopened.

The Court will also grant petitioner's motion to amend his habeas petition. The decision to grant or deny a motion to amend a habeas petition is within the discretion of the district court. *Clemons v. Delo*, 177 F. 3d 680, 686 (8th Cir. 1999); *citing to* Fed.R.Civ.P. Rule 15. Notice and substantial prejudice to the opposing party are the critical factors in determining whether an amendment to a habeas petition should be granted. *Coe v. Bell*, 161 F. 3d 320, 341-342 (6th Cir. 1998).

The Court will permit petitioner to amend his petition, because there is no indication that allowing the amendment would cause any delay to this Court nor is there any evidence of bad faith on petitioner's part in bringing the motion to amend or prejudice to respondent if the motion is granted. See *Gillette v. Tansy*,

17 F. 3d 308, 313 (10th Cir. 1994). Additionally, because petitioner has filed this motion to amend the petition before the Court has adjudicated the issues in his petition, the motion to amend should be granted. *Stewart v. Angelone*, 186 F.R.D. 342, 343 (E.D. Va. 1999). Accordingly, the Court will permit petitioner to amend his petition.

The Court will further order that the Clerk of the Court serve a copy of the amended habeas petition and a copy of this Order on Respondent and on the Attorney General for the State of Michigan by first class mail as provided in Rule 4 of the Rules Governing § 2254 Cases, Rule 4. See *Coffee v. Harry*, 2005 WL 1861943, * 2 (E.D. Mich. August 2, 2005).

The Court will also order the respondent to file a supplemental answer to the amended habeas petition within sixty days of the Court's order. A habeas corpus petitioner who challenges the legality of his state custody is entitled to reasonably prompt disposition of his petition. *Ukawabutu v. Morton*, 997 F. Supp. 605, 610 (D.N.J. 1998). This Court has the discretion under the rules governing responses in habeas corpus cases to set a deadline for a response to petitioner's habeas petition. *Erwin v. Elo*, 130 F. Supp. 2d 887, 891 (E.D. Mich. 2001); 28 U.S.C. § 2243.

ORDER

Based on the foregoing, the motion to reopen the habeas petition to the Court's active docket is **GRANTED**.

IT IS FURTHER ORDERED That Petitioner's Motion to Amend the Petition for Writ of Habeas Corpus is **GRANTED**.

IT IS FURTHER ORDERED That the Clerk of the Court serve a copy of the amended petition for writ of habeas corpus and a copy of this Order on respondent and the Attorney General by first class mail.

IT IS FURTHER ORDERED that respondent shall file a supplemental answer to the amended habeas petition within **sixty (60) days** of the date of this order or show cause why they are unable to comply with the order.

s/John Corbett O'Meara
United States District Judge

Dated: August 30, 2006

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, August 30, 2006, by electronic and/or ordinary mail.

s/William Barkholz
Case Manager